THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 7576 OF 1997

Date: 01.09.2006

Between:

Smt. C. Swayam Prabha and three others.

... Petitioners.

And

Sri Venkateswara University rep. by its Registrar, at Tirupati, Chittoor District.

...

Respondent.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 7576 OF 1997

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Seeking to have the proceedings of respondent No.1 in L.R. No. E-II-4 EAMCET-96/August 1996 dated 30.12.1996, imposing on the petitioner the punishment of dismissal from service, quashed, the present writ petition is filed. During the pendency of the writ petition, the petitioner died and his L.Rs were brought on record as per the orders of this Court dated 14.10.2004 in W.P.M.P. No. 25058 of 2004.

Facts, in brief, are that the petitioner joined as a Lecturer in the 1st respondent University in July 1962. He, thereafter, became a Reader in September, 1968 and a Professor in March, 1979. The respondent-University was requested by the A.P. State Council of Higher Education, (APSHE), vide letter dated 18.11.1995, to conduct EAMCET 1996-97. The APSHE recommended a panel of names, from out of which one person was to be selected, for appointment as a Convener to conduct the test. The Vice Chancellor of the respondent University, vide D.O. letter dated 21.11.1995, while accepting responsibility for conducting EAMCET, submitted a panel of names for appointment

as the Convener and the APSCHE, vide proceedings dated 03.02.1996, appointed the petitioner as the Convener of the committee to conduct EAMCET 1996. The EAMCET test committee, in its meeting held on 19.02.1996, decided to hold the test on 22.05.1996 and accordingly the EAMCET examinations were held at different centers on 22.05.1996. The key of the examination was published in all leading news papers on 03.06.1996. There was a furore in the media and allegations were made of leakage in the Engineering EAMCET-1996 question paper. Several representations were submitted alleging that, on a comparison of the real EAMCET Engineering paper and the grand test EAMCET Engineering papers of a particular residential college at Tirupati on 18.05.1996, 19.05.1996 and 20.05.1996, just before EAMCET was conducted on 22.05.1996 by the S.V. University, at least 110 questions were found to be common.

The Chairman, A.P. State Council for Higher Education, constituted a committee, consisting of its Vice Chairman and Sri M.V.S. Prasad, IAS, Commissioner for Technical Education, to examine these allegations. Consequent upon Writ Petitions being filed, alleging leakage of the question paper, publication of the results of the EAMCET was stayed by this Court. The Vice Chairman of the A.P. State Council of Higher Education, in his report, stated that as many as 110 questions of the Engineering test paper had figured in the grand test paper of Rayalaseema EAMCET Coaching Centre in one form or the other. Meanwhile, a CBCID enquiry was ordered and an FIR in Cr. No. 24 of 1996 was lodged alleging leakage of EAMCET-96 Engineering question paper. The petitioner was arrested on 27.06.1996 on the allegation that he was directly involved in the leakage. The Executive

Council of the University, in its meeting held on 29.06.1996, resolved to place the petitioner under suspension. The petitioner was issued notice on 08.07.1996 to show cause as to why disciplinary action should not be initiated against him. The petitioner submitted his explanation on 15.07.1996 seeking withdrawal of the show cause notice. Hon'ble Sri Justice G. Radhakrishna Rao, a retired Judge of this Court, was appointed as the Enquiry Officer on 16.07.1996 to conduct an enquiry into the leakage of the EAMCET Engineering question paper and the petitioner's involvement therein. The enquiry officer issued a charge memo containing the following charges:

i. You, Prof. C. Raja Rao, abused the confidence reposed on you becoming responsible for the leakage of 120 questions of EAMCET-96 engineering part.

ii. That you did not maintain the secrecy of the EAMCET-96 engineering question paper as expected.

iii. By leakage of 120 questions you, Prof. C. Raja Rao, are guilty of breach of trust for leaking out the said questions. This duty was entrusted to you by the A.P. State Council of Higher Education and you got this appointment on the basis of your acting as a Professor of the S.V. University.

iv. That you, Prof. C. Raja Rao, leaked out the said 120 questions for illegal monetary consideration and thus you are guilty of bribery and corruption.

v. That due to your action of leakage of the said question paper before the stipulated date of examination, several candidates appearing for the EAMCET-96 examination came to know of the said questions in advance.

vi. That by the leakage of the said question paper after due preliminary enquiries, the examination relating to the EAMCET-96 engineering was cancelled which resulted in huge expenditure to the State in addition to much strain and stress to the concerned.

vii. That you, Prof. C. Raja Rao, are guilty of misconduct in leaking out the questions in the Engineering Paper of the EAMCET-96 which is not expected from an employee of the University holding a responsible post.

viii. That you, Prof. C. Raja Rao, exceeded and misused your authority as a Convener in removing six questions and inserting 6 questions in the EAMCET-96 engineering question paper.

The petitioner submitted his explanation thereto on 12.10.1996 denying the charges. Ten witnesses were examined in the enquiry and Exs.P-1 to P-93 were marked as exhibits. The petitioner was examined on 01.12.1996 and written arguments were filed on 09.12.1996. The enquiry officer, in his report dated 19.12.1996, held that all the charges levelled against the petitioner were proved. The Executive Council of the University, in its meeting held on 20.12.1996, resolved to issue final show cause notice calling upon the petitioner to submit his objections to the enquiry officer's report. The petitioner submitted his explanation thereto on 28.12.1996. The petitioner was informed by the Registrar of the University, vide letter dated 09.01.1997, that the Executive Council, in its meeting held on 30.12.1996, had resolved to dismiss him from service with immediate effect.

In the counter-affidavit filed on behalf of the respondents, by the then Registrar of the University, it is stated that principles of natural justice were not violated while conducting the enquiry and that full opportunity was given to the petitioner to defend himself. Respondents would contend that the petitioner is not entitled to make any personal allegations against any person and/or the enquiry officer without making them parties to the writ petition. It is stated that W.P. No. 11247 of 1996 was filed alleging leakage of the Engineering question paper of EAMCET 1996 held on 22.05.1996, that there was wide spread public agitation and press criticism, that the government had ordered an enquiry by the C.B.C.I.D. to find out whether there was any leakage and that this Court had issued directions, from time to time, regarding conduct of the enquiry by the C.B.C.I.D. It is stated that, in the C.B.C.I.D. enquiry, when it was found that there was leakage of the

Engineering question paper, EAMCET-96 was cancelled resulting in wastage both in terms of money, stress and strain to the candidates, to the government and its agencies. It is further stated that the C.B.C.I.D. investigation revealed that the petitioner had leaked the question paper and, since the petitioner was a senior Professor of the University and was nominated as the Convener, EAMCET-96, the illegal act of leakage had affected the reputation of the University also. It is stated that the C.B.C.I.D. had filed a criminal case against the petitioner, that the A.P. State Council for Higher Education had removed the petitioner as the Convener, that he was suspended from service, that an enquiry was ordered and that a retired Judge of this Court was appointed as the Enquiry Officer. It is further stated that there is no record to show that the Vice Chancellor had authorized the petitioner to substitute six questions in the EAMCET question paper or that, after such substitution by the petitioner, the Vice Chancellor had ratified his action. It is contended that there is no express or implied power authorizing the petitioner to have access to the question paper, to consider whether any of the questions are beyond the syllabus or to substitute such questions. The allegations, that the enquiry officer had held the petitioner guilty of the charges on mere surmises and assumptions and that the findings are based on no evidence, are denied. Respondents would also deny the allegations that the enquiry officer had misdirected himself regarding interpretation of the rules, the duties of the Convener and that the respondent-University had resolved to dismiss him from service without considering his explanation. Respondents would deny allegations of bias against the enquiry officer and submit that the petitioner never complained that the

enquiry officer was biased during the course of enquiry proceedings. Respondents would also deny that the enquiry is vitiated for non-examination of the Rector and would submit that if the petitioner intended to have the Rector examined, nothing prevented him from making such a request during the course of the enquiry. Respondents would contend that the petitioner was not entitled to challenge findings of fact in the enquiry nor was he entitled to request this Court to act as an appellate authority over the enquiry report. Respondent would deny non-application of mind by the Executive Council while passing the impugned order of punishment. The allegations that the petitioner was made a scapegoat or that the Executive Council and the Enquiry officer were prejudiced against him are also denied. With regards the allegations of witnesses being tutored by the enquiry officer, it is contended that the petitioner never made any such complaint earlier. Respondent would state that the record of enquiry would show that the enquiry officer sent notices to Sri Konda Reddy of Rayalaseema Coaching Centre, MohanRam Reddy, Dayananda Babu and Bhaskar Reddy to appear before him in the enquiry but they did not turn up.

Sri Gudapati Venkateswarao, learned Counsel for the petitioner, would contend that the findings of the enquiry officer are based on assumptions and presumptions and that there was no direct evidence to establish that the petitioner was involved in the leakage of the EAMCET question paper. Learned Counsel would seek to make a detailed analysis, of the findings of the enquiry officer, in support of his submissions that they are perverse and are based on evidence. Learned Counsel would also make a

reference to the rules, framed in G.O.Ms. No. 184 dated 20.08.1993 and to those in G.O.Ms. No. 467 dated 24.12.1993, to contend that under the rules the role of the Convener was limited, that the petitioner could not be held responsible for the leakage of the question paper and that the charges levelled against him were not established in the enquiry. Learned Counsel would contend that the order of the Executive Council in imposing, on the petitioner, the punishment of dismissal from service, was vitiated for non-application of mind, that firstly there was no leakage, and even if it were assumed that there was a leakage, it could only have been with the printer or in the distribution system and that the petitioner could not held to be responsible therefor. Learned Counsel would contend that the EAMCET 1996 mathematics paper contains more than 75 per cent questions from books which are readily available in the market and the mere fact that a majority of the questions were found to form part of the tests conducted by the Rayalaseema Coaching Centre, did not automatically lead to the inference that the question paper had been leaked. According to the learned Counsel, there was no need for the petitioner, a professor of high repute, to indulge in such illegal acts.

It is well settled that this Court, while exercising its certiorari jurisdiction under Article 226 of the Constitution of India, will not sit in appeal over findings of fact recorded by domestic tribunals nor would it re-appreciate the evidence on record. As the jurisdiction of this Court, under Article 226 of the Constitution of India, is supervisory and not appellate, this Court would, normally, not examine the sufficiency or adequacy of the evidence on record or substitute its views for that of the domestic Tribunal. As long as the departmental enquiry is held in accordance with the applicable

rules, is not in violation of the principles of natural justice and the charges held established are on the basis of the evidence on record, this Court would, normally, not interfere. The nature and extent of punishment to be imposed on a delinquent for proved misconduct is for the competent authority to determine and not for this Court to examine, unless the punishment imposed is one which, under the rules, could not have been imposed at all or is one which shocks its conscience. This Court would not, normally, interfere with or substitute one punishment for another. The degree of proof in departmental enquiries is preponderance of probabilities and, unlike in criminal proceedings, is not proof beyond reasonable doubt. If the charges are established on the evidence on record, the mere fact that cited witnesses were not examined is of no consequence. (**The East India Hotels Vs. Their Workmen**[1]**; J.D. Jain Vs. State Bank of India**[2]).

The Enquiry Officer, holding a domestic enquiry, cannot take any effective steps to compel attendance of witnesses and consequently cannot be said to have caused any procedural irregularity in not causing production of witnesses. (**Tata Oil Mills Company Ltd. v. the Workmen**[3]**; Shambunath Goyal v. Bank of Baroda**[4]). Since the Enquiry Officer has no power, as a court, to summon witnesses, just as the University had produced its witnesses, the charge sheeted employee had to take steps to produce his witnesses. The Enquiry Officer had neither the power to produce nor compel the University to produce witnesses for being cross-examined by the charge sheeted employee. (**Tata Engineering & Locomotive Company Ltd. v. S.C. Prasad**[5]).

In **Nellimerla Jute Mills Vs. Labour Court**[6], the Division bench of this Court held:

".....In the light of the principles laid down, we have to see whether the finding that the domestic enquiry conducted by the appellant was defective or was not proper is justified. The only ground that was argued before us in support of that conclusion is that one of the mediators in the panchanama held at the time when the stolen property was recovered was not examined. It was contended on behalf of the employee that all the other witnesses were employees of the appellant and they were made to support the case of the appellant. If the independent mediator had been examined, truth would have come out. Inasmuch as he was not examined, the domestic enquiry was not proper. We are unable to agree with the contention. **It is open to the Management to examine such witnesses as it chooses in the domestic enquiry. If it does not examine any witness, it takes the risk of the case being held to be not proved. It cannot be compelled to examine any particular witness. The mere fact that it does not examine any witness cannot vitiate the enquiry. No standing orders have been pointed which compel the Management to examine all the witnesses to a particular incident. Hence, it cannot be said that any standing order is violated.**

The only other question is whether the employee was given a reasonable opportunity to meet the case of the Management and whether the principles of natural justice have been violated. We are unable to see how it can be said that the principles of natural justice are violated by the employer not examining a particular witness. If an employee requires a particular witness to be examined and it is within the power of the employer to produce such witness for examination and it does not do so, it may reasonable be argued that the principles of natural justice are violated as the employee has not been given a reasonable opportunity to examine a witness to depose in his favour, but that is not the case here. In these circumstances, it is impossible to hold that the domestic enquiry was not proper or was defective. In G.E.C. of India Vs. V. Kedia: 1968 (1) LLJ 731 it was contended that the domestic enquiry was vitiated as a particular witness employed by the company was not examined. It was held that the mere fact that the Enquiry Officer did not of his own accord examine the said witness does not vitiate the enquiry. **It was open to the parties to summon such evidence oral or documentary which they considered necessary and if one or the other party omitted to summon a witness or a document, the Enquiry Officer cannot be blamed for it, nor is the enquiry rendered defective (refer Supreme Court in Tata Oil Mills Vs. Workmen: AIR 1965 SC 155).** In that case, the employee contended that the Enquiry Officer should have been taken steps to get the two witnesses brought before him for giving evidence. The Supreme Court observed that in a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness and have taken steps to produce his witnesses. It was further observed that if on refusing to adjourn the hearing at the instance of workman, the Enquiry Officer failed to give the workman a

reasonable opportunity to lead evidence, that may in a proper case be considered to introduce an element of infirmity in the enquiry, but it cannot be held that the enquiry suffered from infirmity in the enquiry, but it cannot be held that the enquiry suffered from infirmity merely because the Enquiry Officer did not compel the witnesses whom the employee wanted to come and give evidence. In our view, the present case is a fortiori one. **If the fact that the Enquiry Officer does not compel a witness whom the employee wants to give evidence does not vitiate the enquiry, it would follow that the fact that the Enquiry Officer did not examine a witness who would support the Management would not vitiate the enquiry. It cannot be said that by not examining the witness, any injustice was caused to the employee.** Reliance was placed on the decision in State Bank of India Vs. R.K. Jain: 1971 (II) LLj 599. In that case, the workman brought two witnesses of considerable importance at a prior enquiry conducted by another Enquiry Officer which was abandoned for no fault of the workman. In the subsequent enquiry, he made a request to have the two witnesses summoned for giving evidence on his side, but his request was not forwarded to the Management and no arrangements for production of the two witnesses were made. In those circumstances, it was held that the principles of natural justice had been violated and the workman was not afforded a reasonable opportunity to place his defence before the Enquiry Officer and that the order passed on such a domestic enquiry could not be sustained. **The situation in the present case is entirely different as this is not a case where the Management has not taken any steps to examine the witnesses who were required to be produced by the workman, but it is a case where the Management did not choose to examine one witness on its own behalf.** We are therefore of the view that the Tribunal was not justified in holding that the domestic enquiry was not proper……."(emphasis supplied)

A charged employee is not entitled to contend that the management should examine a particular individual as a witness or should produce the said individual for cross-examination by the delinquent. Since the enquiry officer had issued notices to persons in charge of the Rayalaseema Coaching Centre, and in as much as he had no power to compel their attendance, their non-appearance/non-participation in the enquiry proceedings does not vitiate the punishment imposed on the petitioner as long as there is adequate evidence on record sufficient to prove the charges levelled against him.

The plea of malice and bias must also be rejected. The petitioner

has chosen not to implead the disciplinary authority or the enquiry officer as party eo-nominee. It is settled law that the person against whom malice or bias is alleged should be impleaded as a party respondent to the proceedings, given an opportunity to meet the allegations and in his absence no enquiry over the allegations should be made. (**STATE OF BIHAR v P.P.SHARMA**[7]). Even otherwise, except vague and baseless allegation that the enquiry officer and the disciplinary authority are biased, no factual foundation has been laid by the petitioner to substantiate the said allegations. It is well settled that the burden of establishing malafides is very heavy on the person who alleges it. Allegations of mala fides are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility (**E.P. ROYAPPA v STATE OF TAMIL NADU**[8]). In the absence of the persons, against whom bias or malice is alleged, being arrayed as parties to the writ petition, such pleas do not call for any further examination.

The enquiry officer held that the petitioner, as the Convener, was required to maintain strict confidentiality and secrecy while conducting the EAMCET examination. The petitioner, while going through the proofs, had removed and substituted questions and had thereby abused the confidence reposed on him. The enquiry officer held that, at the time when the Vice Chairman was out of station, he had instructed the petitioner to contact the Chairman of the A.P. State Council of Higher Education at Hyderabad either through phone or in writing under intimation to the incharge Vice Chancellor, that in the present case leakage had been established and the leakage had

emanated from the only person who had knowledge about the questions i.e., the petitioner and that those who had received the questions included the Rayalaseema Coaching Centre and Sri Dayananda Babu. The enquiry officer held that, on examination of the facts and the chain of circumstances, the only conclusion that could be drawn was that for some consideration 106 to 110 questions had been passed on to them by the petitioner. The enquiry officer took note of Ex.P-89 document seized from the house of Sri Konda Reddy, the Director of Rayalaseema Coaching Centre, on 26.06.1996, Ex.P-90 the document seized from the house of Sri Dayananda Babu on 28.06.1996, Ex.P-91 the document seized from the house of Sri Bhaskar Reddy on 28.06.1996 and Ex.P-92 the report of the hand writing expert. Q-1, Q-12 referred to in the opinion of the handwriting expert related to document which the police had seized from Mohan Ram Reddy, Ex.Q-13 to Q-24 were the questions seized from Sri Dayananda Babu written by Mohan Ram Reddy and Exs.P-89 to 90 were the Xerox copies. The enquiry officer held the hand writing on Ex.P89 and 90 to be one and the same as established in the report of the hand writing expert. The enquiry officer held that this was an additional circumstance which established the chain of circumstances relating to the passing of the questions from Sri Raja Rao, Convener, to the Rayalaseeka Coaching Centre and Sri Dayananda Babu. The enquiry officer held that the petitioner did not maintain secrecy and revealed the mathematics question paper to Professor Seetharamaiah the mediator and had leaked and supplied the paper to the Rayalaseema Coaching Centre and Sri Dayananda Babu, that neither the rules nor the manual or the guidelines contained any provision with regards removal and

insertion of questions after the Chairman had selected them, and that without obtaining permission the petitioner, as the Convener, had removed and inserted six questions.

While the submission of Sri Gudapati Venkateswara Rao that there is no direct evidence to link the petitioner may not be without merit, it must not be lost sight of that the degree of proof, required to establish a charge in departmental enquiries, is preponderance of probabilities and not proof beyond reasonable doubt. As there is reasonable evidence on record in support of the conclusions, the adequacy or sufficiency of which is not for this Court to examine, the findings of the enquiry officer holding the petitioner guilty of the charges cannot be characterized as either perverse or as based on no evidence. Leakage of the question papers had resulted in cancellation of the 1996 EAMCET affecting the career prospects of several young students. The punishment of dismissal from service, imposed on the petitioner, is neither a punishment which could not have been imposed at all nor one which shocks the conscience of this Court and does not, therefore, call for interference in proceedings under Article 226 of the Constitution of India.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B. PRAKASH RAO, J

Date: -08-2006

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RAMESH RANGANATHAN, J

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[1] AIR 1974 SC 696

[2] AIR 1982 SC 673

[3] AIR 1965 SC 155

[4] AIR 1984 SC 289

[5] 1969 (2) SCC 372

[6] 1981(II) ALT 455

[7] AIR 1991 SC 1260

[8] AIR 1974 SC 555